

15 May 1956

MEMORANDUM FOR: Acting Assistant Director of Logistics

FROM : Office of General Counsel

SUBJECT : Delegation of Authority to sign Certificates of Need

1. You have requested my opinion as to whether the Director may delegate to the Deputy Director (Support), authority to sign "certificates of need" which Government agencies contemplating the use of space in certain facilities administered by the General Services Administration are required to furnish under the provisions of Public Buildings Purchase Contract Act of 1954.

2. The Public Buildings Purchase Contract Act (40 USCA 356 et. seq.) authorizes the Administrator, General Services to obtain such space as may be needed by means of purchase contracts. In delimiting the broad authority conferred upon the Administrator to negotiate contracts for this purpose, the Act specifies that no appropriations shall be made unless the purchase contract project shall have been approved by the Public Works committees of the Senate and House; and that for purposes of obtaining such approval, the Administrator shall transmit to the committees, among other things, "a certificate of need for the space signed by the head of the agency or agencies which will use the facility". (Section 356 (e)(3)) (emphasis added). It is understood that it is with respect to the particular subsection that your question is concerned.

3. Statutory provisions of this nature, specifically requiring the certification of the head of an agency as to the existence of a fact, are considered as contemplating the exercise of judgment and discretion and only by the official designated. A long line of decisions construing similar pieces of legislation are unanimous in holding; that when the Congress has seen fit to impose such a responsibility upon the head of a department, it may not be delegated to, or exercised by, a subordinate not authorized by law to act for the department head (16 Comp. Gen. 595 and cases cited). Since the DD/S is not empowered by statute to act for the Director in this matter, I must advise that any attempt to delegate to him the Director's responsibility for personally signing certificates would be legally objectionable.

4. In regard to the matter of the delegation made by the Secretary of Treasury to the Administrative Assistant Secretary to sign certificates on his behalf to which you have called my attention, it must be noted that this delegation was made pursuant to the provisions of Reorganization Plan No. 26 of 1950 (5 USCA p. 148), the terms of which authorize the Secretary to transfer to any officer in his department any function imposed on him. This situation is clearly distinguishable from that with which we are confronted.

STATINTEL

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